INDIANA JUDICIAL CENTER

CASE CLIPS

Selected decisions of the Indiana appellate courts abstracted for judges by the Indiana Judicial Center.

VOL. XXIX, NO. 3 **January 18, 2002**

CRIMINAL LAW ISSUES

WARREN v. STATE, No. 49S00-0011-CR-634, ___ N.E.2d ___ (Ind. Jan. 10, 2002).
DICKSON, J.

The fourth Amendment to the United States Constitution requires search warrants to "particularly describ[e] the place to be searched, and the persons or things to be seized." U.S. CONST. amend. IV. The United States Supreme Court has stated:

> General warrants, of course, are prohibited by the Fourth Amendment. "[T]he problem [posed by the general warrant] is not that of intrusion per se, but of a general, exploratory rummaging in a person's belongings. . . . [The Fourth Amendment addresses the problem] by requiring a 'particular description' of the things to be seized." [Citation omitted.] This requirement "'makes general searches . . . impossible and prevents the seizure of one thing under a warrant describing another. As to what is to be taken, nothing is left to the discretion of the officer executing the warrant.'" [Citations omitted.]

[Citation omitted.] . . .

In this case the warrant listed the items to be seized as "guns, ammunition, gun parts, lists of acquaintances, blood, microscop0ic [sic] or trace evidence, silver duct tape, white cord and any other indicia of criminal activity including but not limited to books, records, documents, or any other such items." [Citation to Brief omitted.] . . . We agree that the phrase "any other indicia of criminal activity including but not limited to books, records, documents, or any other such items" grants an officer unlawful unbridled discretion to conduct a general exploratory search. The infirmity of this catchall language does not doom the entire warrant, however, but rather only requires the suppression of the evidence seized pursuant to that part of the warrant but not the suppression of the evidence obtained pursuant to the valid specific portions of the warrant. [Citations omitted.]

The defendant argues that the identification cards and driver's licenses were seized pursuant to the catchall language. We disagree. Because they contained photos depicting the same person as Fox's roommate, the identification cards are within the "lists of acquaintances" description on the search warrant. The police properly seized these items because they were particularly described in the warrant.

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SHEPARD, C. J., and BOEHM, RUCKER, and SULLIVAN, JJ., concurred.

HALL v. STATE, No. 27A05-0106-CR-245, ___ N.E.2d ___ (Ind. Ct. App. Jan. 15, 2002).
SULLIVAN, J.

Virgil Hall, III, appeals the trial court's denial of his motion for leave to depose members of the jury in furtherance of his motion to correct error. . . .

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We begin by noting that few cases exist which address the precise question of whether the jury may be deposed upon defendant's request to determine if there was misconduct by the jury. . . .

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In Griffin v. State, 754 N.E.2d 899, 902 (Ind. 2001), our Supreme Court recognized the necessity of protecting a defendant's right to confront witnesses, "which may be violated if a jury considers information that was not in evidence." The Court then detailed the progression of the law regarding impeachment of jury verdicts and the protection of defendant's rights. The Court noted that these issues were first addressed by the U.S. Supreme Court in Mattox v. United States, 146 U.S. 140 (1892). Our Supreme Court adopted the Mattox approach in Fox v. State, 457 N.E.2d 1088 (Ind. 1984), and Indiana later adopted Evidence Rule 606(b). In Griffin, our Supreme Court also reviewed whether the common law prohibition against a juror testifying about how an outside influence affected them, first devised in Mattox, still applies when 606(b) is invoked. The Court held that the prohibition still applied, thereby accepting the previous view that a defendant's right to confront witnesses was not violated if the jury could testify to the existence of a 606(b) exception, but not the effect that the influence had on them. Griffin, 754 N.E.2d at 903.

Hall also relies upon decisions from other jurisdictions in asserting that the trial court improperly denied his motion to depose the jurors. Although the cases he cites, and others which our research has discovered, do lend support to the fact that some jurisdictions allow a party to depose the jury in regard to juror misconduct, none of the cases support Hall's proposition that he is guaranteed the right to depose jurors. [Citation omitted.] . . .

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From a review of the transcript, it appears that Hall's wishes were for the right to depose the jurors in order to obtain the same information which was already before the trial court. The trial court had received affidavits about the matter, including the one submitted by Daniels in which he admitted to telling the whole jury about his stepson's beliefs of Hall's innocence or guilt. It does not appear that Hall could have garnered any information other than the effect that the information had on the jurors. As our Supreme Court determined in Griffin, 606(b) prohibits juror testimony about how an outside influence affected the decision making process. [Citation omitted.]

The State also has a paramount interest in limiting discovery regarding jury misconduct. The general rule of prohibiting juror impeachment of verdicts is based upon the concerns of post-verdict jury tampering, defeating the jury's solemn acts under oath, and the possibility that dissatisfied jurors would attempt to destroy a verdict after assenting. Id. at 902. The fear that depositions could be cleverly used and worded to create an issue of jury impeachment is expressed in Judge Sharp's view of the use of affidavits for impeachment, "'[i]t is all too easy for ingenious counsel to prepare carefully worded affidavits to cast doubt on a jury verdict.'" [Citation omitted.] [Footnote omitted.] This is not to say that a party may never depose the jurors in order to determine if and to what extent there was jury misconduct; however, the deposition of jurors is a discovery method that should be used in only the most appropriate situations. The more common discovery method, which also reduces the chance that counsel may influence the jury's wording, is for the trial court to conduct *in camera* interviews with jurors to determine the extent to which they were exposed to prohibited information and the potential prejudice that resulted. [Citation omitted.]

In this case, the trial court did not commit an abuse of discretion by denying Hall's request to depose the jurors. Evidence was already before the trial court showing that Daniels had informed the jury of the views of the inmates, communicated through his

stepson, regarding Hall's innocence or guilt. Also, following the previous interpretations of 606(b) and the common law views of jury impeachment, we find no basis for mandating that a party has the right to depose the jury. Rather, the appropriate method to be used for determining prejudice when there are allegations of jury misconduct is best left to the discretion of the trial court.

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KIRSCH and ROBB, JJ., concurred.

CIVIL LAW ISSUE

SCHUMAN v. KOBETS, No. 49A05-0103-CV-91, ___ N.E.2d ___ (Ind. Ct. App. Jan. 15, 2002).

FRIEDLANDER, J.

Following the trend of several other states, Indiana has reexamined the rights and duties governing the landlord-tenant relationship. Specifically, Indiana courts have progressively replaced the common-law doctrine of caveat lessee with the adoption of an implied warranty of habitability in the context of residential leases. [Citations omitted.] . . .

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Both parties acknowledge that the determination of whether personal injury damages are recoverable under a breach of an implied warranty of habitability claim rests primarily on the interpretation of the supreme court's holding in *Johnson v. Scandia Assoc., Inc.* In *Johnson,* the supreme court affirmed the trial court's dismissal of tenant's claim for breach of warranty of habitability based on the tenant's failure to plead a factual basis showing that the landlord actually extended the warranty as part of the agreement, and thus a failure to state a valid claim that the warranty was breached. While dismissing the case, the supreme court also discussed the remedies available to a tenant presenting a valid claim against the landlord for a breach of an implied warranty of habitability. *Johnson v. Scandia Assoc., Inc.,* 717 N.E.2d 24 (Ind. 1999). In its discussion, the court noted that under the rule espoused in *Hadley v. Baxendale,* 9 Ex. 341, 156 End. Rep. 620 (1854) consequential damages could be awarded on a breach of contract claim when the nonbreaching party's loss flows naturally and probably from the breach and was contemplated by the parties when the contract was made. *Id.* Thus, in order to recover consequential damages in the context of a landlord-tenant dispute, the tenant must show that the parties intended to compensate for personal injury losses caused by the apartment's unfitness. *Id.* The court then concluded that "[w]here the warranty is express, consequential damages for injury to the person may be available as a remedy. Where the warranty is implied-in-fact, however, consequential damages may not be awarded because personal injury is outside the parties' contemplation." *Id.* at 32. This language indicates that the supreme court intended, as a matter of law, to preclude the recovery of personal injury and property damages in a breach of implied warranty of habitability claim. Thus, we reject Schuman's claim that her personal injuries were within the contemplation of the parties at the inception of the lease.

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BAKER and ROBB, JJ., concurred.

CASE CLIPS is published by the
Indiana Judicial Center
National City Center - South Tower, 115 West Washington Street, Suite 1075
Indianapolis, Indiana 46204-3417
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